THE WASHINGTON UNION.

The Supreme Court of the United States.

THE DRED SCOTT CASE.

The Official Report.

This case was brought up, by writ of error, from the circuit court of the United States for the district of Missouri.

It was an action of trespass *vi et armis* instituted in the circuit court by Scott against Sandford.

Prior to the institution of the present suit, an action was brought by Scott for his freedom in the circuit court of St. Louis county, (State court,) where there was a verdict and judgment in his favor. On a writ of error to the supreme court of the State, the judgment below was reversed, and the case remanded to the circuit court, where it was continued to await the decision of the case now in question.

The declaration of Scott contained three counts: one, that Sandford had assaulted the plaintiff; one, that he had assaulted Harriet Scott, his wife; and one, that he had assaulted Eliza Scott and Lizzie Scott, his children.

Sandford appeared, and filed the following plea:

Dred Scott
vs. } *Plea to the Jurisdiction of the Court.*
John F. A. Sandford.

April Term, 1854.

And the said John F. A. Sandford, in his own proper person, comes and says that this court ought not to have or take further cognizance of the action aforesaid, because he says that said cause of action, and each and every of them, (if any such have accrued to the said Dred Scott,) accrued to the said Dred Scott out of the jurisdiction of this court, and exclusively within the jurisdiction of the courts of the State of Missouri, for that, to wit: the said plaintiff, Dred Scott, is not a citizen of the State of Missouri, as alleged in his declaration, because he is a negro of African descent; his ancestors were of pure African blood, and were brought into this country and sold as negro slaves, and this the said Sandford is ready to verify.

Wherefore, he prays judgment whether this court can or will take further cognizance of the action aforesaid.

JOHN F. A. SANDFORD.

To this plea there was a demurrer in the usual form, which was argued in April, 1854, when the court gave judgment that the demurrer should be sustained.

In May, 1854, the defendant, in pursuance of an agreement between counsel, and with the leave of the court, pleaded in bar of the action:

1. Not guilty.

2. That the plaintiff was a negro slave, the lawful property of the defendant, and, as such, the defendant gently laid his hands upon him, and thereby had only restrained him, as the defendant had a right to do.

3. That with respect to the wife and daughters of the plaintiff, in the second and third counts of the declaration mentioned, the defendant had, as to them, only acted in the same manner, and in virtue of the same legal right.

In the first of these pleas, the plaintiff joined issue; and to the second and third, filed replications alleging that the defendant, of his own wrong and without the cause in his second and third pleas alleged, committed the trespasses, &c.

The counsel then filed the following agreed statement of facts, viz:

In the year 1834 the plaintiff was a negro slave belonging to Dr. Emerson, who was a surgeon in the army of the United States. In that year, 1834, said Dr. Emerson took the plaintiff from the State of Missouri to the military post at Rock Island, in the State of Illinois, and held him there as a slave until the month of April or May, 1836. At the time last mentioned said Dr. Emerson removed the plaintiff from said military post at Rock Island to the military post at Fort Snelling, situate on the west bank of the Mississippi river, in the Territory known as Upper Louisiana, acquired by the United States of France, and situate north of the latitude of thirty-six degrees thirty minutes north, and north of the State of Missouri. Said Dr. Emerson held the plaintiff in slavery at said Fort Snelling, from said last-mentioned date until the year 1838.

In the year 1835 Harriet, who is named in the second count of the plaintiff's declaration, was the negro slave of Major Taliaferro, who belonged to the army of the United States. In that year, 1835, said Major Taliaferro took said Harriet to said Fort Snelling, a military post, situated as hereinbefore stated, and kept her there as a slave until the year 1836, and then sold and delivered her as a slave at said Fort Snelling unto the said Dr. Emerson hereinbefore named Said Dr. Emerson held said Harriet in slavery at said Fort Snelling until the year 1838.

In the year 1836 the plaintiff and said Harriet at said Fort Snelling, with the consent of said Dr. Emerson, who then claimed to be their master and owner, intermarried, and took each other for husband and wife. Eliza and Lizzie, named in the third count of the plaintiff's declaration, are the fruit of that marriage. Eliza is about fourteen years old, and was born on board the steamboat Gipsey, north of the north line of the State of Missouri, and upon the river Mississippi. Lizzie is about seven years old, and was born in the State of Missouri, at the military post called Jefferson Barracks.

In the year 1838 said Dr. Emerson removed the plaintiff and said Harriet and their said daughter Eliza from said Fort Snelling to the State of Missouri, where they have ever since resided.

Before the commencement of this suit, said Dr. Emerson sold and conveyed the plaintiff, said Harriet, Eliza, and Lizzie, to the defendant as slaves, and the defendant has ever since claimed to hold them and each of them as slaves.

At the times mentioned in the plaintiff's declaration the defendant, claiming to be owner as aforesaid, laid his hands upon said plaintiff, Harriet, Eliza, and Lizzie, and imprisoned them, doing in this respect, however, no more than what he might lawfully do if they were of right his slaves at such times.

Further proof may be given on the trial for either party.

It is agreed that Dred Scott brought suit for his freedom in the circuit court of St. Louis county; that there was a verdict and judgment in his favor; that, on a writ of error to the Supreme Court, the judgment below was reversed, and the same remanded to the circuit court, where it has been continued to await the decision of this case.

In May, 1854, the cause went before a jury, who found the following verdict, viz: "As to the first issue joined in this case, we of the jury find the defendant not guilty; and as to the issue secondly above joined, we of the jury find that before and at the time when, &c., in the first count mentioned, the said Dred Scott was a negro slave, the lawful property of the defendant; and as to the issue thirdly above joined, we, the jury, find that before and at the time when, &c., in the second and third counts mentioned, the said Harriet, wife of said Dred Scott, and Eliza and Lizzie, the daughters of the said Dred Scott, were negro slaves, the lawful property of the defendant."

Whereupon, the court gave judgment for the defendant.

After an ineffectual motion for a new trial, the plaintiff filed the following bill of exceptions:

On the trial of this cause by the jury, the plaintiff, to maintain the issues on his part, read to the jury the following agreed statement of facts, (see agreement above.) No further testimony was given to the jury by either party. Thereupon the plaintiff moved the court to give to the jury the following instruction, viz:

"That, upon the facts agreed to by the parties, they ought to find for the plaintiff. The court refused to give such instruction to the jury, and the plaintiff, to such refusal, then and there duly excepted."

The court then gave the following instruction to the jury, on motion of the defendant:

"The jury are instructed that, upon the facts in this case, the law is with the defendant." The plaintiff excepted to this instruction.

Upon these exceptions the case came up to this court.

It was argued at December term, 1855, and ordered to be reargued at the present term.

It was now argued by Mr. Blair and Mr. G. F. Curtis for the plaintiff in error, and by Mr. Geyer and Mr. Johnson for the defendant in error.

The reporter regrets that want of room will not allow him to give the arguments of counsel; but he regrets it the less, because the subject is thoroughly examined in the opinion of the court, the opinions of the concurring judges, and the opinions of the judges who dissented from the judgment of the court.

Mr. Chief Justice Taney delivered the opinion of the court.

This case has been twice argued. After the argument at the last term, differences of opinion were found to exist among the members of the court; and as the questions in controversy are of the highest importance, and the court was at that time much pressed by the ordinary business of the term, it was deemed advisable to continue the case, and direct a reargument on some of the points, in order that we might have an opportunity of giving to the whole subject a more deliberate consideration. It has accordingly been again argued by counsel, and considered by the court; and I now proceed to deliver its opinion.

There are two leading questions presented by the record:

1. Had the circuit court of the United States jurisdiction to hear and determine the case between these parties? And

2. If it had jurisdiction, is the judgment it has given erroneous or not?

The plaintiff in error, who was also the plaintiff in the court below, was, with his wife and children, held as slaves by the defendant in the State of Missouri; and he brought this action in the circuit court of the United States for that district to assert the title of himself and his family to freedom.

The declaration is in the form usually adopted in that State to try questions of this description, and contains the averment necessary to give the court jurisdiction: that he and the defendant are citizens of different States—that is, that he is a citizen of Missouri, and the defendant a citizen of New York.

The defendant pleaded in abatement to the jurisdiction of the court that the plaintiff was not a citizen of the State of Missouri, as alleged in his declaration, being a negro of African descent, whose ancestors were of pure African blood, and who were brought into this country and sold as slaves.

To this plea the plaintiff demurred, and the defendant joined in demurrer. The court overruled the plea, and gave judgment that the defendant should answer over. And he thereupon put in sundry pleas in bar, upon which issues were joined; and at the trial the verdict and judgment were in his favor. Whereupon the plaintiff brought this writ of error.

Before we speak of the pleas in bar, it will be proper to dispose of the questions which have arisen on the plea in abatement.

That plea denies the right of the plaintiff to sue in a court of the United States, for the reasons therein stated.

If the question raised by it is legally before us, and the court should be of opinion that the facts stated in it disqualify the plaintiff from becoming a citizen, in the sense in which that word is used in the constitution of the United States, then the judgment of the circuit court is erroneous, and must be reversed.

It is suggested, however, that this plea is not before us; and that as the judgment in the court below on this plea was in favor of the plaintiff, he does not seek to reverse it, or bring it before the court for revision by his writ of error; and also that the defendant waived this defence by pleading over, and thereby admitted the jurisdiction of the court.

But, in making this objection, we think the peculiar and limited jurisdiction of courts of the United States has not been adverted to. This peculiar and limited jurisdiction has made it necessary, in these courts, to adopt different rules and principles of pleading, so far as jurisdiction is concerned, from those which regulate courts of common law in England, and in the different States of the Union which have adopted the common-law rules.

In these last-mentioned courts, where their character and rank are analogous to that of a circuit court of the United States; in other words, where they are what the law terms courts of general jurisdiction, they are presumed to have jurisdiction, unless the contrary appears. No averment in the pleadings of the plaintiff is necessary in order to give jurisdiction. If the defendant objects to it, he must plead it specially, and unless the fact on which he relies is found to be true by a jury, or admitted to be true by the plaintiff, the jurisdiction cannot be disputed in an appellate court.

Now, it is not necessary to inquire whether in courts of that description a party who pleads over in bar, when a plea to the jurisdiction has been ruled against him, does or does not waive his plea; nor whether upon a judgment in his favor on the pleas in bar, and a writ of error brought by the plaintiff, the question upon the plea in abatement would be open for revision in the appellate court. Cases that may have been decided in such courts, or rules that may have been laid down by common-law pleaders, can have no influence in the decision in this court. Because, under the constitution and laws of the United States, the rules which govern the pleadings in its courts in questions of jurisdiction stand on different principles and are regulated by different laws.

This difference arises, as we have said, from the peculiar character of the government of the United States; for although it is sovereign and supreme in its appropriate sphere of action, yet it does not possess all the powers which usually belong to the sovereignty of a nation. Certain specified powers, enumerated in the constitution, have been conferred upon it; and neither the legislative, executive, nor judicial departments of the government can lawfully exercise any authority beyond the limits marked out by the constitution. And in regulating the judicial department, the cases in which the courts of the United States shall have jurisdiction are particularly and specifically enumerated and defined; and they are not authorized to take cognizance of any case which does not come within the description therein specified. Hence, when a plaintiff sues in a court of the United States, it is necessary that he should show, in his pleading, that the suit he brings is within the jurisdiction of the court, and that he is entitled to sue there. And if he omits to do this, and should, by any oversight of the circuit court, obtain a judgment in his favor, the judgment would be reversed in the appellate court for want of jurisdiction in the court below. The jurisdiction would not be presumed, as in the case of a common-law English or State court, unless the contrary appeared. But the record, when it comes before the appellate court, must show, affirmatively, that the inferior court had authority, under the constitution, to hear and determine the case. And if the plaintiff claims a right to sue in a circuit court of the United States, under that provision of the constitution which gives jurisdiction in controversies between citizens of different States, he must distinctly aver in his pleading that they are citizens of different States; and he cannot maintain his suit without showing that fact in the pleadings.

This point was decided in the case of Bingham *vs.* Cabot, (in 3 Dall., 382,) and ever since adhered to by the court. And in Jackson *vs.* Ashton, (8 Pet., 148,) it was held that the objection to which it was open could not be waived by the opposite party, because consent of parties could not give jurisdiction.

It is needless to accumulate cases on this subject. Those already referred to, and the cases of Capron *vs.* Van Noorden, (in 2 Cr., 126,) and Montalet *vs.* Murray, 4 Cr., 46,) are sufficient to show the rule of which we have spoken. The case of Capron *vs.* Van Noorden strikingly illustrates the difference between a common-law court and a court of the United States.

If, however, the fact of citizenship is averred in the declaration, and the defendant does not deny it, and put it in issue by plea in abatement, he cannot offer evidence at the trial to disprove it, and consequently cannot avail himself of the objection in the appellate court, unless the defect should be apparent in some other part of the record; for if there is no plea in abatement, and the want of jurisdiction does not appear in any other part of the transcript brought up by the writ of error, the undisputed averment of citizenship in the declaration must be taken in this court to be true. In this case the citizenship is averred, but it is denied by the defendant in the manner required by the rules of pleading, and the fact upon which the denial is based is admitted by the demurrer; and if the plea and demurrer and judgment of the court below upon it are before us upon this record, the question to be decided is, whether the facts stated in the plea are sufficient to show that the plaintiff is not entitled to sue as a citizen in a court of the United States.

We think they are before us. The plea in abatement, and the judgment of the court upon it, are a part of the judicial proceedings in the circuit court, and are there recorded as such; and a writ of error always brings up to the superior court the whole record of the proceedings in the court below. And in the case of the United States *vs.* Smith, (11 Wheat., 172,) this court said that, the case being brought up by writ of error, the whole record was under the consideration of this court. And this being the case in the present instance, the plea in abatement is necessarily under consideration; and it becomes, therefore, our duty to decide whether the facts stated in the plea are or are not sufficient to show that the plaintiff is not entitled to sue as a citizen in a court of the United States.

This is certainly a very serious question, and one that now for the first time has been brought for decision before this court. But it is brought here by those who have a right to bring it, and it is our duty to meet it and decide it.

The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities guarantied by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the constitution.

It will be observed that the plea applies to that class of persons only whose ancestors were negroes of the African race, and imported into this country, and sold and held as slaves. The only matter in issue before the court, therefore, is, whether the descendants of such slaves, when they shall be emancipated, or who are born of parents who had become free before their birth, are citizens of a State in the sense in which the word citizen is used in the constitution of the United States. And this being the only matter in dispute on the pleadings, the court must be understood as speaking in this opinion of that class only—that is, of those persons who are the descendants of Africans who were imported into this country, and sold as slaves.

The situation of this population was altogether unlike that of the Indian race. The latter, it is true, formed no part of the colonial communities, and never amalgamated with them in social connexions or in government. But although they were uncivilized, they were yet a free and independent people, associated together in nations or tribes, and governed by their own laws. Many of these political communities were situated in territories to which the white race claimed the ultimate right of dominion. But that claim was acknowleged to be subject to the right of the Indians to occupy it as long as they thought proper, and neither the English nor colonial governments claimed or exercised any dominion over the tribe or nation by whom it was occupied, nor claimed the right to the possession of the territory, until the tribe or nation consented to cede it. These Indian governments were regarded and treated as foreign governments, as much so as if an ocean had separated the red man from the white; and their freedom has constantly been acknowleged, from the time of the first emigration to the English colonies to the present day, by the different governments which succeeded each other. Treaties have been negotiated with them, and their alliance sought for in war; and the people who compose these Indian political communities have always been treated as foreigners not living under our government. It is true that the course of events has brought the Indian tribes within the limits of the United States under subjection to the white race; and it has been found necessary, for their sake as well as our own, to regard them as in a state of pupilage, and to legislate to a certain extent over them and the territory they occupy. But they may, without doubt, like the subjects of any other foreign government, be naturalized by the authority of Congress, and become citizens of a State and of the United States; and if an individual should leave his nation or tribe, and take up his abode among the white population, he would be entitled to all the rights and privileges which would belong to an emigrant from any other foreign people.

We proceed to examine the case as presented by the pleadings.

The words "people of the United States" and "citizens" are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the "sovereign people," and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty? We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them.

It is not the province of the court to decide upon the justice or injustice, the policy or impolicy, of these laws. The decision of that question belonged to the political or law-making power, to those who formed the sovereignty and framed the constitution. The duty of the court is, to interpret the instrument they have framed, with the best lights we can obtain on the subject, and to administer it as we find it, according to its true intent and meaning when it was adopted.

In discussing this question we must not confound the rights of citizenship which a State may confer within its own limits and the rights of citizenship as a member of the Union. It does not by any means follow, because he has all the rights and privileges of a citizen of a State, that he must be a citizen of the United States. He may have all of the rights and privileges of a citizen of a State, and yet not be entitled to the rights and privileges of a citizen in any other State: for, previous to the adoption of the constitution of the United States, every State had the undoubted right to confer on whomsoever it pleased the character of citizen, and to endow him with all its rights. But this character, of course, was confined to the boundaries of the State, and gave him no rights or privileges in other States beyond those secured to him by the laws of nations and the comity of States. Nor have the several States surrendered the power of conferring these rights and privileges by adopting the constitution of the United States. Each State may still confer them upon an alien, or any one it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States. The rights which he would acquire would be restricted to the State which gave them. The constitution has conferred on Congress the right to establish a uniform rule of naturalization, and this right is evidently exclusive, and has always been held by this court to be so. Consequently, no State, since the adoption of the constitution, can, by naturalizing an alien, invest him with the rights and privileges secured to a citizen of a State under the federal government, although, so far as the State alone was concerned, he would undoubtedly be entitled to the rights of a citizen, and clothed with all the rights and immunities which the constitution and laws of the State attached to that character.

It is very clear, therefore, that no State can, by any act or law of its own, passed since the adoption of the constitution, introduce a new member into the political community created by the constitution of the United States. It cannot make him a member of this community by making him a member of its own. And for the same reason it cannot introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the constitution brought into existence, but were intended to be excluded from it.

The question then arises, whether the provisions of the constitution in relation to the personal rights and privileges to which the citizen of a State should be entitled embraced the negro African race at that time in this country, or who might afterwards be imported, who had then or should afterwards be made free in any State; and to put it in the power of a single State to make him a citizen of the United States, and endue him with the full rights of citizenship in every other State without their consent? Does the constitution of the United States act upon him whenever he shall be made free under the laws of a State, and raised there to the rank of a citizen, and immediately clothe him with all the privileges of a citizen in every other State, and in its own courts?

The court think the affirmative of these propositions cannot be maintained; and if it cannot, the plaintiff in error could not be a citizen of the State of Missouri, within the meaning of the constitution of the United States, and, consequently, was not entitled to sue in its courts.

It is true, every person, and every class and description of persons, who were at the time of the adoption of the constitution recognised as citizens in the several States, became also citizens of this new political body; but none other; it was formed by them, and for them and their posterity, but for no one else; and the personal rights and privileges guarantied to citizens of this new sovereignty were intended to embrace those only who were then members of the several State communities, or who should afterwards, by birthright or otherwise, become members, according to the provisions of the constitution and the principles on which it was founded. It was the union of those who were at that time members of distinct and separate political communities into one political family, whose power, for certain specified purposes, was to extend over the whole territory of the United States; and it gave to each citizen rights and privileges outside of his State which he did not before possess, and placed him in every other State upon a perfect equality with its own citizens as to rights of person and rights of property; it made him a citizen of the United States.

It becomes necessary, therefore, to determine who were citizens of the several States when the constitution was adopted; and in order to do this, we must recur to the governments and institutions of the thirteen colonies when they separated from Great Britain and formed new sovereignties, and took their places in the family of independent nations. We must inquire who, at that time, were recognised as the people or citizens of a State whose rights and liberties had been outraged by the English government, and who declared their independence and assumed the powers of government to defend their rights by force of arms.

In the opinion of the court the legislation and histories of the times, and the language used in the Declaration of Independence, show that neither the class of persons who had been imported as slaves nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument.

It is difficult at this day to realize the state of public opinion in relation to that unfortunate race, which prevailed in the civilized and enlightened portions of the world at the time of the Declaration of Independence, and when the constitution of the United States was framed and adopted. But the public history of every European nation displays it in a manner too plain to be mistaken.

They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without doubting for a moment the correctness of this opinion.

And in no nation was this opinion more firmly fixed or more uniformly acted upon than by the English government and English people. They not only seized them on the coast of Africa, and sold them or held them in slavery for their own use, but they took them as ordinary articles of merchandise to every country where they could make a profit on them, and were far more extensively engaged in this commerce than any other nation in the world.

The opinion thus entertained and acted upon in England was naturally impressed upon the colonies they founded on this side of the Atlantic; and, accordingly, a negro of the African race was regarded by them as an article of property, and held, and bought, and sold as such in every one of the thirteen colonies which united in the Declaration of Independence, and afterwards formed the constitution of the United States. The slaves were more or less numerous in the different colonies, as slave labor was found more or less profitable. But no one seems to have doubted the correctness of the prevailing opinion of the time.

The legislation of the different colonies furnishes positive and indisputable proof of this fact.

It would be tedious, in this opinion, to enumerate the various laws they passed upon this subject. It will be sufficient, as a sample of the legislation which then generally prevailed throughout the British colonies, to give the laws of two of them; one being still a large slaveholding State, and the other the first State in which slavery ceased to exist.

The province of Maryland, in 1717, (ch. 13, s. 5,) passed a law declaring "that if any free negro or mulatto intermarry with any white woman, or if any white man shall intermarry with any negro or mulatto woman, such negro or mulatto shall become a slave during life, excepting mulattoes born of white women, who, for such intermarriage, shall only become servants for seven years, to be disposed of as the justices of the county court, where such marriage so happens, shall think fit; to be applied by them towards the support of a public school within the said county. And any white man or white woman who shall intermarry as aforesaid with any negro or mulatto, such white man or white woman shall become servants during the term of seven years, and shall be disposed of by the justices as aforesaid, and be applied to the uses aforesaid."

The other colonial law to which we refer was passed by Massachusetts in 1705, (chap. 6.) It is entitled "An act for the better preventing of a spurious and mixed issue," &c.; and it provides that "if any negro or mulatto shall presume to smite or strike any person of the English or other Christian nation, such negro or mulatto shall be severely whipped, at the discretion of the justices before whom the offender shall be convicted."

And "that none of her Majesty's English or Scottish subjects, nor of any other Christian nation, within this province, shall contract matrimony with any negro or mulatto; nor shall any person, duly authorized to solemnize marriage, presume to join any such in marriage, on pain of forfeiting the sum of fifty pounds; one moiety thereof to her Majesty, for and towards the support of the government within this province, and the other moiety to him or them that shall inform and sue for the same, in any of her Majesty's courts of record within the province, by bill, plaint, or information."

We give both of these laws in the words used by the respective legislative bodies, because the language in which they are framed, as well as the provisions contained in them, show, too plainly to be misunderstood, the degraded condition of this unhappy race. They were still in force when the revolution began, and are a faithful index to the state of feeling towards the class of persons of whom they speak, and of the position they occupied throughout the thirteen colonies, in the eyes and thoughts of the men who framed the Declaration of Independence and established the State constitutions and governments. They show that a perpetual and impassable barrier was intended to be erected between the white race and the one which they had reduced to slavery, and governed as subjects with absolute and despotic power, and which they then looked upon as so far below them in the scale of created beings, that intermarriages between white persons and negroes or mulattoes were regarded as unnatural and immoral, and punished as crimes, not only in the parties, but in the person who joined them in marriage; and no distinction in this respect was made between the free negro or mulatto and the slave, but this stigma, of the deepest degradation, was fixed upon the whole race.

We refer to these historical facts for the purpose of showing the fixed opinions concerning that race, upon which the statesmen of that day spoke and acted. It is necessary to do this, in order to determine whether the general terms used in the constitution of the United States, as to the rights of man and the rights of the people, was intended to include them, or to give to them or their posterity the benefit of any of its provisions.

The language of the Declaration of Independence is equally conclusive:

It begins by declaring that "when in the course of human events it becomes necessary for one people to dissolve the political bands which have connected them with another, and to assume among the powers of the earth the separate and equal station to which the laws of Nature and Nature's God entitle them, a decent respect for the opinions of mankind requires that they should declare the causes which impel them to the separation."

It then proceeds to say: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among them is life, liberty, and the pursuit of happiness; that to secure these rights governments are instituted, deriving their just powers from the consent of the governed."

The general words above quoted would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood. But it is too clear for dispute that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration; for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles they asserted; and instead of the sympathy of mankind, to which they so confidently appealed, they would have deserved and received universal rebuke and reprobation.

Yet the men who framed this declaration were great men—high in literary acquirements—high in their sense of honor, and incapable of asserting principles inconsistent with those on which they were acting. They perfectly understood the meaning of the language they used, and how it would be understood by others; and they knew that it would not in any part of the civilized world be supposed to embrace the negro race, which, by common consent, had been excluded from civilized government and the family of nations, and doomed to slavery. They spoke and acted according to the then established doctrines and principles, and in the ordinary language of the day, and no one misunderstood them. The unhappy black race were separated from the white by indelible marks, and laws long before established, and were never thought of or spoken of except as property, and when the claims of the owner or the profit of the trader were supposed to need protection.

This state of public opinion had undergone no change when the constitution was adopted, as is equally evident from its provisions and language.

The brief preamble sets forth by whom it was formed, for what purposes, and for whose benefit and protection. It declares that it is formed by the *people* of the United States; that is to say, by those who were members of the different political communities in the several States; and its great object is declared to be to secure the blessings of liberty to themselves and their posterity. It speaks in general terms of the *people* of the United States, and of *citizens* of the several States, when it is providing for the exercise of the powers granted or the privileges secured to the citizen. It does not define what description of persons are intended to be included under these terms, or who shall be regarded as a citizen and one of the people. It uses them as terms so well understood that no further description or definition was necessary.

But there are two clauses in the constitution which point directly and specifically to the negro race as a separate class of persons, and show clearly that they were not regarded as a portion of the people or citizens of the government then formed.

One of these clauses reserves to each of the thirteen States the right to import slaves until the year 1808, if it thinks proper; and the importation which it thus sanctions was unquestionably of persons of the race of which we are speaking, as the traffic in slaves in the United States had always been confined to them; and by the other provision the States pledge themselves to each other to maintain the right of property of the master by delivering up to him any slave who may have escaped from his service, and be found within their respective territories. By the first above-mentioned clause, therefore, the right to purchase and hold this property is directly sanctioned and authorized for twenty years by the people who framed the constitution; and by the second, they pledge themselves to maintain and uphold the right of the master in the manner specified as long as the government they then formed should endure; and these two provisions show conclusively that neither the description of persons therein referred to, nor their descendants, were embraced in any of the other provisions of the constitution; for certainly these two clauses were not intended to confer on them or their posterity the blessings of liberty, or any of the personal rights so carefully provided for the citizen.

No one of that race had ever migrated to the United States voluntarily; all of them had been brought here as articles of merchandise. The number that had been emancipated at that time were but few in comparison with those held in slavery; and they were identified in the public mind with the race to which they belonged, and regarded as a part of the slave population rather than the free. It is obvious that they were not even in the minds of the framers of the constitution when they were conferring special rights and privileges upon the citizens of a State in every other part of the Union.

Indeed, when we look to the condition of this race in the several States at the time, it is impossible to believe that these rights and privileges were intended to be extended to them.

It is very true that, in that portion of the Union where the labor of the negro race was found to be unsuited to the climate and unprofitable to the master, but few slaves were held at the time of the Declaration of Independence; and when the constitution was adopted, it had entirely worn out in one of them, and measures had been taken for its gradual abolition in several others. But this change had not been produced by any change of opinion in relation to this race, but because it was discovered, from experience, that slave labor was unsuited to the climate and productions of these States; for some of the States, where it had ceased or nearly ceased to exist, were actively engaged in the slave trade, procuring cargoes on the coast of Africa, and transporting them for sale to those parts of the Union where their labor was found to be profitable, and suited to the climate and productions. And this traffic was openly carried on, and fortunes accumulated by it, without reproach from the people of the States where they resided. And it can hardly be supposed that, in the States where it was then countenanced in its worst form—that is, in the seizure and transportation—the people could have regarded those who were emancipated as entitled to equal rights with themselves.

And we may here again refer, in support of this proposition, to the plain and unequivocal language of the laws of the several States, some passed after the Declaration of Independence and before the constitution was adopted, and some since the government went into operation.

We need not refer, on this point, particularly to the laws of the present slaveholding States. Their statute-books are full of provisions in relation to this class, in the same spirit with the Maryland law which we have before quoted. They have continued to treat them as an inferior class, and to subject them to strict police regulations, drawing a broad line of distinction between the citizen and the slave races, and legislating in relation to them upon the same principle which prevailed at the time of the Declaration of Independence. As relates to these States, it is too plain for argument, that they have never been regarded as a part of the people or citizens of the State, nor supposed to possess any political rights which the dominant race might not withhold or grant at their pleasure. And as long ago as 1822, the court of appeals of Kentucky decided that free negroes and mulattoes were not citizens within the meaning of the constitution of the United States; and the correctness of this decision is recognised, and the same doctrine affirmed, in 1 Meigs's Tenn. Reports, 331.

And if we turn to the legislation of the States where slavery had worn out, or measures taken for its speedy abolition, we shall find the same opinions and principles equally fixed and equally acted upon.

Thus, Massachusetts, in 1786, passed a law similar to the colonial one of which we have spoken. The law of 1786, like the law of 1705, forbids the marriage of any white person with any negro, Indian, or mulatto, and inflicts a penalty of fifty pounds upon any one who shall join them in marriage; and declares all such marriages absolutely null and void, and degrades thus the unhappy issue of the marriage by fixing upon it the stain of bastardy. And this mark of degradation was renewed, and again impressed upon the race, in the careful and deliberate preparation of their revised code published in 1836. This code forbids any person from joining in marriage any white person with any Indian, negro, or mulatto, and subjects the party who shall offend in this respect to imprisonment, not exceeding six months, in the common jail, or to hard labor, and to a fine of not less than fifty nor more than two hundred dollars; and, like the law of 1786, it declares the marriage to be absolutely null and void. It will be seen that the punishment is increased by the code upon the person who shall marry them by adding imprisonment to a pecuniary penalty.

So, too, in Connecticut. We refer more particularly to the legislation of this State, because it was not only among the first to put an end to slavery within its own territory, but was the first to fix a mark of reprobation upon the African slave trade. The law last mentioned was passed in October, 1788, about nine months after the State had ratified and adopted the present constitution of the United States; and by that law it prohibited its own citizens, under severe penalties, from engaging in the trade, and declared all policies of insurance on the vessel or cargo made in the State to be null and void. But, up to the time of the adoption of the constitution, there is nothing in the legislation of the State indicating any change of opinion as to the relative rights and position of the white and black races in this country, or indicating that it meant to place the latter, when free, upon a level with its citizens; and certainly nothing which would have led the slaveholding States to suppose that Connecticut designed to claim for them, under the new constitution, the equal rights and privileges and rank of citizens in every other State.

The first step taken by Connecticut upon this subject was as early as 1774, when it passed an act forbidding the further importation of slaves into the State. But the section containing the prohibition is introduced by the following preamble:

"And whereas the increase of slaves in this State is injurious to the poor, and inconvenient."

This recital would appear to have been carefully introduced, in order to prevent any misunderstanding of the motive which induced the legislature to pass the law, and places it distinctly upon the interest and convenience of the white population—excluding the inference that it might have been intended in any degree for the benefit of the other.

And in the act of 1784, by which the issue of slaves, born after the time therein mentioned, were to be free at a certain age, the section is again introduced by a preamble assigning a similar motive for the act. It is in these words:

"Whereas sound policy requires that the abolition of slavery should be effected as soon as may be consistent with the rights of individuals and the public safety and welfare"—showing that the right of property in the master was to be protected, and that the measure was one of policy, and to prevent the injury and inconvenience, to the whites, of a slave population in the State.

And still further pursuing its legislation, we find that in the same statute, passed in 1774, which prohibited the further importation of slaves into the State, there is also a provision by which any negro, Indian, or mulatto servant, who was found wandering out of the town or place to which he belonged, without a written pass such as is therein described, was made liable to be seized by any one, and taken before the next authority to be examined and delivered up to his master, who was required to pay the charge which had accrued thereby. And a subsequent section of the same law provides that if any free negro shall travel without such pass, and shall be stopped, seized, or taken up, he shall pay all charges arising thereby; and this law was in full operation when the constitution of the United States was adopted, and was not repealed till 1797. So that up to that time free negroes and mulattoes were associated with servants and slaves in the police regulations established by the laws of the State.

And again in 1833 Connecticut passed another law which made it penal to set up or establish any school in that State for the instruction of persons of the African race not inhabitants of the State, or to instruct or teach in any such school or institution, or board or harbor for that purpose, any such person, without the previous consent in writing of the civil authority of the town in which such school or institution might be.

And it appears by the case of Crandall *vs.* The State, reported in 10 Conn. Rep., 340, that upon an information filed against Prudence Crandall for a violation of this law, one of the points raised in the defence was, that the law was a violation of the constitution of the United States; and that the persons instructed, although of the African race, were citizens of other States, and therefore entitled to the rights and privileges of citizens in the State of Connecticut. But Chief Justice Dagget, before whom the case was tried, held that persons of that description were not citizens of a State, within the meaning of the word citizen in the constitution of the United States, and were not, therefore, entitled to the privileges and immunities of citizens in other States.

The case was carried up to the supreme court of errors of the State, and the question fully argued there. But the case went off upon another point, and no opinion was expressed on this question.

[TO BE CONTINUED.]

WASHINGTON CITY.

TUESDAY MORNING, MAY 26, 1857.

Mr. Henry M. Lewis, Montgomery, Alabama, is our general travelling agent for the States of Alabama and Tennessee, assisted by C. F. Lewis, James O. Lewis, and Samuel D. Lewis.

Mr. Israel E. James, No. 182 South Tenth street, Philadelphia, is our general travelling agent, assisted by Wm. H. Weld, John Collins, James Deering, J. Hammett, R. S. James, Thos. D. Nice, R. W. Morrison, E. W. Wiley, Wm. L. Waterman, Alex. H. Carson, D. K. Minor, Ben. F. Swain, T. Ashman, and P. Davis.

Mr. C. W. James, No. 1 Harrison street, Cincinnati, Ohio, is our general collecting agent for the Western States and Texas, assisted by H. J. Thomas, William H. Thomas, Thos. M. James, Dr. A. L. Childs, George Morris, and Richard Leake. Receipts of either will be good.

THE DRED SCOTT CASE.

After a delay, which no one anticipated, the report of this case has been published, and we have been able to procure a copy. We commence the publication of the opinion of the court, delivered by Chief Justice Taney, and shall follow it with one of the two dissents. We may add one of the six other opinions sustaining, but upon grounds somewhat different, the views of the majority of the court. The opinions we propose to publish will give a fair and full view of the whole case, and afford our readers an opportunity to judge for themselves of the reasons for and against the final action of the court. They address themselves to the understanding and sober judgment of the people, who will not suffer their ultimate conclusions to be warped and misdirected by the coarse invective or harsh epithets which have been so profusely heaped upon the majority of the court. We shall withhold the expression of the views and opinions we have formed upon this subject until after the completion of the publication of the opinions referred to. We hope then to be able to present our readers a review of the case and the principles involved befitting the gravity and importance of the subject.

CHIEF JUSTICE TANEY'S OPINION IN THE DRED SCOTT CASE.—THE WEEKLY UNION.

We commence to-day, as will be seen, the publication of the long-expected official report of the opinion of Chief Justice Taney, of the Supreme Court, in the Dred Scott case. For several days to come the publication of this opinion, and other opinions of the court in this case, will necessarily occupy much of that space in our columns which is usually devoted to editorials and miscellaneous intelligence. Our readers will be more than compensated for the loss of their customary variety in the possession of several of the most important opinions that have ever emanated from the highest judicial tribunal of the country.

The whole of Chief Justice Taney's opinion will appear in this week's issue of the *Weekly Union*. In addition to the regular edition, a large number of extra copies will be printed. Persons desiring extra copies should send their orders to the publication office without delay. Price, three cents per single copy, or two dollars and fifty cents per hundred.

HON. D. S. DICKINSON.

Hon. Daniel S. Dickinson, of New York, was complimented last evening by a serenade at his lodgings at Willards' Hotel. There was a very large attendance of our citizens, and in response to loud and reiterated calls Mr. Dickinson made his appearance at the balcony in front of the hotel and addressed his large, and, if we may so call it, his impromptu audience at considerable length and with great power and effect. The lateness of the hour and the crowded state of our columns alone prevent an extended notice of one of the most agreeable popular demonstrations that have been witnessed at the seat of government for many months.

Dr. Gwin, the distinguished senator from California, arrived in this city on Saturday last, and is stopping at Willards' Hotel.

THE FRUITS OF REPUBLICANISM.

Wherever the republicans have secured control of the legislative power they have done so upon issues foreign to the interests of their own locality. When installed in authority a glaring disregard of the rights and interests of the people is manifested. Those differing with them in opinion must be punished, and the hungry leaders and dependants must be rewarded. This leads to legislation, which alarms the friends of popular rights and written constitutions, portions of which are deemed unconstitutional and null and void. These views have been strikingly illustrated in New York. Instead of keeping within conceded constitutional authority, a republican legislature has defaced her statute-book with numerous oppressive and tyrannical enactments, some of which the ablest jurists of the State declare to be unconstitutional and void. The republican executive of the State, and those aiding in their enactment, are seeking, without awaiting the opinions of the judiciary upon the questions raised under them, to enforce these laws with the strong hand of power. The greedy impulses of the swarm of new appointees under these doubtful laws cannot be restrained by considerations of moderation, prudence, and the public good, but demand immediate gratification at the hazard of the peace and best interests of the great commercial city.

The republicans are calling for the intervention of the military to aid them in clutching the power which they so ardently seek. They insist that if they cannot, by their own strength, attain the positions they seek and the spoils they covet, because the merchants and business men of the city will not engage in a foray for their benefit, the governor shall order the militia from the country to come and assist them. The power and the spoils they must have, if it bathes the streets in blood and wraps houses in flames. A more reckless disregard of the constitution and laws, and the peace and good order of society, was never manifested in the most barbarous times. We most sincerely hope, before any definite act of violence shall have occurred, a returning sense of right may induce the leaders to stay their hands, and await the action of the judiciary upon the cases now before it. Should they not do so, there is but one proper course for the friends of order and constitutional law to pursue. They should do no unlawful act, and commit no violence, but leave their adversaries to enjoy a monopoly of wrong and violence, and rely upon the peaceful action of the judiciary to redress their wrongs. The courts will soon declare who are right, and administer justice with an even hand. If greedy and unprincipled men shall forcibly thrust the rightful officials out of their lawful places, and assume and exercise unlawful authority, the ministers of justice will soon correct the error and punish the wrong, while a justly-indignant public will announce next November, in thunder tones, its irreversible condemnation of the acts and doings of the aggressors.